IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 3412 of 2007(F)

AGAINST THE ORDER DATED 04/01/2007 IN IN CMP 46/2007 IN CMP.3317/2006 of J.M.C. - II, PEERUMADE

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PETITIONER:

VEYILAMMAL, W/O.KARUPPAYYA,
DOOR NO.163, WARD II, COLONY STREET,
AMMAPETTY VILLAGE, UTHAMA PALAYAM TALUK,
THENI DISTRICT, TAMIL NADU.

BY ADV. SRI.G.GOPAKUMAR (CHERTHALA)
SRI.SUNI M.D.

RESPONDENTS:

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1. VANI, W/O LATE SELVAN,
CHOTTUPARA ESTATE LANES,
PERIYAR VILLAGE, IDUKKI DISTRICT.

2. SURULI RAJ, AMMAPETTI COLONY,
UTHAMA PALAYAM P.O., TAMIL NADU.

BY ADV. SRI.JACOB SEBASTIAN
SRI.A.RASHID
GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:TRUE COPY OF THE PETITION DT.22.01.2007.

EXT.P2: TRUE COPY OF THE STATEMENT MADE BY THE CHILDREN DT.22.01.07.

EXT.P3: TRUE COPY OF THE ORDER PASSED BY THE CHILD WELFARE COMMITTEE DT.22.01.2007.

EXT.P4: TRUE PHOTO COPY OF THE ORDER DT.4.1.07.

EXT.P5: TRUE COPY OF THE COPY APPLICATION MADE BY THE PETITIONER DT.27.01.07.

/TRUE COPY/

P.A TO JUDGE

R.BASANT, J

W.P.C.No.3412 of 2007

Dated this the 27th day of February 2007

JUDGMENT

The parties have been referred to in this order in the manner in which they are ranked before the learned Magistrate.

2. The dispute is about the custody of two children aged eight years and five years. The petitioner is the mother of those two children. The father of the children that is the husband of the petitioner was allegedly murdered on 01/10/2006. There is an allegation that his brother-in-laws, that is the brothers of the petitioner are responsible for such murder. Two weeks after the murder, the petitioner herein (I shall refer to her as the grandmother), who is the paternal grandmother of the children, along with the respondent, allegedly took away the children from the custody of the petitioner. This obliged the petitioner to come before the learned Magistrate with an application under Section 21 of the Protection of Women from Domestic Violence Act, 2005. In that application, ex parte order under Section 23 was passed by the learned Magistrate. A copy of that order is produced as Ext.P4. It was directed that the children shall be

handed over to the custody of their mother by the respondent, that is the paternal uncle. The children were not handed over. The SHO, Kumili was directed to execute the order. The order has not been executed so far. The respondent has allegedly appeared before the learned Magistrate on 22/01/2007 and had undertaken to produce the children on the next date. It is submitted that, thereafter, the children were produced before the Child Welfare Committee by the paternal grandmother and the Child Welfare Committee passed Ext.P3 order. The paternal grandmother has come to this court with this petition complaining about the attempt made to execute Ext.P4 order, to which she is not even made a party, by the petitioner with the help of the police.

3. In Ext.P4 proceedings, the paternal grandmother (the petitioner herein) has not been made a party. Even, allegedly, the paternal grandmother, along with the respondent had taken away the children from the custody of the mother.

4. The learned counsel for the paternal grandmother contends that without even arraying her as a party under the impugned order, the custody which is duly recognised by Ext.P3

order by the Child Welfare Committee is attempted to be disturbed. The learned counsel for the petitioner/mother submits that the respondent is involved in an attempt to ensure that the petitioner/mother does not derive the advantage of Ext.P4 order and it is he, who now puts up the paternal grandmother in an attempt to frustrate the efforts to execute Ext.P4 order.

5. Having considered all the relevant inputs, I am satisfied that the following directions can be issued. There is an agreement between the parties on such directions also.

In the result, this writ petition is allowed in part and the following directions are issued:

i) The petitioner herein, Veyilammal, paternal grandmother shall produce both the children before the learned Chief Judicial Magistrate of the First Class Court - II, Peerumedu on 05/03/2007. She shall be entitled to advance all her contentions before the learned Magistrate. The learned Magistrate, after considering the submissions of the petitioner, the respondent and the paternal grandmother, shall pass appropriate orders - either final order under Section 21 or

appropriate interim order under Section 23, as expeditiously as possible, at any rate, within a period of one week from 05/03/2007. Till then, the interim order Ext.P4 shall not be executed.

This writ petition is accordingly allowed in part to the above extent.

Hand over copy of this order to the learned counsel for the respondent, that is the mother of the children for production before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006